No. 88-1905

In The

Supreme Court of the United States

October Term, 1989

EDDIE KELLER, et al.,

Petitioners,

v.

STATE BAR OF CALIFORNIA, et al.,

Respondents.

On Writ Of Certiorari In The California Supreme Court

BRIEF OF AMICUS CURIAE BEVERLY HILLS BAR ASSOCIATION IN SUPPORT OF RESPONDENTS

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TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES – Continued

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INTERESTS OF AMICUS CURIAE

Amicus curiae the Beverly Hills Bar Association and the joining bar associations are voluntary bar associations in the State of California. The Beverly Hills Bar Association is located in Beverly Hills, California, and consists of approximately 3000 members. The joining bar associations represent literally tens of thousands of California attorneys. The Court's actions in this case will significantly affect the interests of these attorneys, both as members of a voluntary bar and as members of the State Bar of California (the "State Bar"). If petitioners prevail in this lawsuit, the State Bar will be unable to carry out its programs in furtherance of its statutory mandate – the advancement of the science of jurisprudence and the

improvement of the administration of justice. Voluntary bars, such as amicus the Beverly Hills Bar Association and the joining bars, cannot fill the gap. They are too numerous and diverse, and have different purposes and agendas than the State Bar.

Respondents must necessarily focus on the constitutional issues presented in this case, and therefore may be unable to emphasize sufficiently the important public purposes served by the State Bar. As one of the largest voluntary bars in the state, the Beverly Hills Bar Association is in a position to demonstrate the importance of the State Bar and the role it has played in insuring the quality of legal services provided in California and in promoting the fair and efficient administration of justice. Through this brief amicus curiae, the Beverly Hills Bar Association hopes to provide the Court with an historical perspective on the functions of the State Bar and the impact which reversal of the California Supreme Court's decision would have on the people of California and the members of the bar alike.

The consent of counsel for both petitioners and respondents has been obtained and is being filed with Court.

SUMMARY OF ARGUMENT

The State Bar of California is charged by statute with promoting the public interest in obtaining quality legal representation and improving the administration of justice. Cal. Bus. & Prof. Code § 6031(a) (West Supp. 1989). In furtherance of these important duties, the Bar regularly provides the Legislature and the public with the

composite judgment of its members on matters directly affecting the administration of justice and the practice of law. Petitioners seek to curtail this function on the theory that the Bar has exceeded its authority by engaging in political and ideological activity with which they disagree, in violation of their Constitutional rights. Under their argument, the State Bar would be barred from taking a position on virtually any matter substantially affecting the administration of justice without the unanimous approval of its membership. Petitioners contend, however, the public interest in promoting the efficient administration of justice will continue to be fulfilled without any concomitant infringement of their First Amendment rights if voluntary bars associations assume responsibility for many of the State Bar's advisory functions.

Petitioners are wrong. If they succeed in hobbling the State Bar, no other entity or group of entities is available to fill the gap. Voluntary bar associations will be unable to fulfill its functions in an efficient and meaningful way. The activities of the State Bar undertaken in fulfillment of its statutory charge are too numerous and too demanding in time and resources to be performed effectively by voluntary bar associations. Moreover, there are simply too many local bars, each with its own agenda, to permit a prompt, organized response to a legislative or executive request for assistance. And, unlike the State Bar – a public entity charged with promoting the public welfare – the voluntary bars, as private organizations, are free to promote the interests of their members exclusively without regard to the interests of the public.

Furthermore, the State's interest in advancing the science of jurisprudence and the administration of justice

is an inherently political one. In practice, it would be virtually impossible to distinguish between the activities of which petitioners complain and those activities which everyone, even petitioners, agree would legitimately further the efficient administration of justice. Given the threat of personal liability faced by members of the Bar's governing body, it is likely that, if petitioners' proposed rule is adopted, the Bar would refrain from addressing all but the most uncontroversial of topics.

Finally, the claimed impingements of petitioners' First Amendment rights are so minimal and abstract that the public interest favors permitting the State Bar to function unencumbered. As a democratic organization, the State Bar encourages its members to help determine the Bar's program. The mere payment of dues to an organization which later utilizes a portion of those dues to support proposed legislation democratically endorsed by a majority of its members does not result in a compelled affirmation of belief by the dues payor in its content. Furthermore, the State Bar does not speak on behalf of its individual members. To the contrary, its members are free to disagree with positions espoused by the Bar and to advocate publicly against them.

In sum, California's interest in promoting the efficient administration of justice is sufficiently compelling to justify the *de minimus* intrusion on petitioners' First Amendment rights resulting from the use of a portion of compelled membership dues to support causes with which they disagree. As Justice Harlan observed almost thirty years ago, "[i]t is exceedingly regrettable that such specious contentions as appellant makes in this case should have resulted in putting the Integrated Bar under

this cloud of partial unconstitutionality." *Lathrop v. Donohue*, 367 U.S. 820, 865 (1961) (Harlan, J., concurring).

ARGUMENT

I.

THE STATE BAR OF CALIFORNIA HAS PLAYED A VITAL ROLE IN THE ADMINISTRATION OF JUSTICE IN CALIFORNIA FOR OVER SIXTY YEARS.

A. The State Bar Is Authorized By Statute To Speak Out On Matters Related To The Advancement Of The Science Of Jurisprudence And The Administration Of Justice.

The State Bar of California was created by the Legislature in 1927, and was later established as a constitutional entity by public referendum. *See* Cal.Const. art VI. The State Bar Act, California Business and Professions Code sections 6000-6228 (West Supp. 1989), designates the State Bar as a public corporation and enumerates its powers. The State Bar is empowered to "[d]o all . . . acts . . . necessary or expedient for the administration of its affairs and the attainment of its purposes," including the appropriation and disbursement of State Bar funds. *Id.* §§ 6001(g), 6028(a).

Of particular importance to the issues involved in this case, the State Bar is expressly authorized to address matters of a governmental nature:

> The board may aid in all matters pertaining to the advancement of the science of jurisprudence or to the improvement of the administration of justice, including, but not by way of limitation, all matters that may advance the professional interests of the members of the State Bar and

such matters as concern the relations of the bar with the public.

Id. § 6031(a). Thus, the State Bar is encouraged and in some situations required to advise and assist the Legislature, other governmental entities and the public on matters singularly within the expertise of its members. *See also* Cal. Gov't Code § 68725 (West Supp. 1989) (compelling State Bar to cooperate with and assist the Commission on Judicial Performance); Cal. Gov't Code § 12011.5 (West Supp. 1989) (requiring State Bar to evaluate the judicial qualifications of nominees for appointment to the courts of record); Cal. Gov't Code § 10307 (West 1980) (authorizing Board of Governors of the State Bar to assist the Law Revision Commission).

B. California Has A Significant, If Not Compelling, Interest In Assuring The State Bar Fulfills Its Statutory Mandate.

1. The State Bar Advises The Legislature On Pending Legislation And Provides Expert Legal Advice On Matters Affecting The Administration Of Justice.

Almost thirty years ago, this Court recognized the public interests served by the integration of the bar: the maintenance of high standards of conduct in the legal profession and the promotion of the efficient administration of justice. *Lathrop*, 367 U.S. at 828-32, 843. These interests are no less compelling today.[1] The California

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[1] In their opening brief, petitioners contend the interest necessary to justify the State Bar's intrusion on their First

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Supreme Court has called the efficient administration of justice, the " 'laudable general purpose of the [State Bar] act.' " *Keller v. State Bar*, 47 Cal. 3d 1152, 1160, 767 P.2d 1020, 1024, 255 Cal. Rptr. 542, 546 (1989) (quoting *Herron v. State Bar*, 212 Cal. 196, 199, 298 P. 474, 475 (1931)). The California Supreme Court's "view in this respect can [hardly] be considered in any way unreasonable." *Lathrop*, 367 U.S. at 862, 864 (Harlan, J., concurring) ("I can

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Amendment rights must be "compelling" ones. Petitioners' Opening Brief (OB) at 13, 23-25. However, the decisions which directly discuss the issue of compelled membership – *Lathrop*, 367 U.S. 820, *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209 (1977), *Ellis v. Brotherhood of Railway, Airline and Steamship Clerks*, 466 U.S. 435 (1984) – speak only in terms of "legitimate" state interests. Petitioners cite this Court's opinion in *Roberts v. United States Jaycees*, 468 U.S. 609 (1984), as requiring a "compelling" state interest to justify infringements on freedom of association. OB at 13. However in *Roberts*, the intrusion on the Jaycees members' First Amendment rights – the forced admission of women to a voluntarily formed all-male organization – was far more significant than the intrusion on petitioners' rights resulting from the use of their compelled dues in ways with which they disagree. *See Roberts*, 468 U.S. at 622-23. Moreover, nothing in *Roberts* can be seen as overruling, implicitly or otherwise, the Court's holdings in *Lathrop*, *Ellis* and *Abood*. *See also Levine v. Heffernan*, 864 F.2d 457, 460-63 (7th Cir. 1988) (holding *Lathrop's* legitimate state interest test has not been implicitly overruled in later Supreme Court decision). While amicus curiae firmly believes all California need show is a legitimate state interest, even if the State Bar's activities must be judged by the more stringent compelling state interest test, California's interest in promoting the science of jurisprudence and the efficient administration of justice is sufficiently compelling to justify the minimal intrusion on petitioners' First Amendment rights resulting from the use of compelled membership dues. *See* section III. B., *infra*.

only regard as entirely gratuitous a contention that there is anything less than a most substantial state interest in Wisconsin having the views of the members of its Bar 'on measures directly affecting the administration of justice and the practice of law' ").

For over sixty years the California State Bar has been actively involved in assisting the Legislature on matters of legal reform and the administration of justice. The benefit of such an arrangement is obvious. As Justice Harlan observed:

> "[T]he composite judgment of the members of the bar of the state on measures directly affecting the administration of justice and the practice of law" may well be as helpful and informative to a state legislature as the work of individual legal scholars and of such organizations as the American Law Institute, for example, is to state and federal courts. State and federal courts are, of course, indifferent to the personal beliefs and predilections of any of such groups. The function such groups serve is a rationalizing one and their power flows from and is limited to their ability to convince by arguments from generally agreed upon premises. They are exercising the techniques and knowledge which lawyers are trained to possess in the task of solving problems with which the legal profession is most familiar. The numberless judicial citations to their work is proof enough of their usefulness in the judicial decision-making process.[2]

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[2] It is of no small significance that when *Lathrop* was written thirty-one jurisdictions had "permanent legislative service agencies which recommend[ed] 'substantive' legislative programs and forty-two jurisdictions utilize[d] such permanent agencies in recommending statutory revision." *Lathrop,*

(Continued on following page)

Id. at 863 (Harlan, J., concurring). And, as the Executive Secretary of the New York Law Revision Commission commented, "there are areas in which 'lawyers as lawyers have more to offer, to solve a given question, than other skilled persons or groups.' " *Id.* (Harlan, J., concurring) (quoting 40 Cornell L.Q. 641, 644).

Page constraints prevent us from providing the Court with a complete list of the State Bar's activities in this regard. We therefore present only selected examples. For a more complete discussion of the Bar's legislative involvement, *see* Joint Appendix (JA) Vol. I at 198.

> In 1928, the State Bar formed the Committee on Constitutional Amendments and the Committee on Revision of the Corporation Laws. The latter committee studied and proposed a complete revision of California corporation laws, which was ultimately enacted by the Legislature in 1931. JA Vol. I at 203.
>
> In the 1940's, the State Bar, in cooperation with the Judicial Council, studied and redrafted the rules governing appellate procedure and sponsored legislation giving the Judicial Council authority to prescribe these rules in civil and criminal cases. In addition, the State Bar and the Judicial Council conducted an intensive study aimed at reorganizing California's lower court structure and revising article VI of the California Constitution. JA Vol. I at 206.

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367 U.S. at 864 (Harlan, J., concurring) (citing "Permanent Legislative Service Agencies," published by the Council of State Governments).

In 1947, the California Administrative Procedure Act was enacted with the support of the State Bar after nearly ten years of State Bar study and recommendation. JA Vol. I at 206.

During the 1950's, the State Bar, again in cooperation with the Judicial Council, co-sponsored the first major court reorganization in California, which resulted in significant changes in trial court procedure and practice, the structure of the trial courts, appellate court procedure, and criminal law and procedure. JA Vol. I at 208.

In the 1960's and 1970's, the State Bar was instrumental in the Legislature's adoption of new pre-trial procedures, the Uniform Commercial Code, the Evidence Code, a revised Corporations Code, the Family Law Act, and the Civil Discovery Act. The State Bar further sponsored the initial legislation permitting arbitration as an alternative to trial and was directed by the Legislature to propose and adopt rules for the selection of arbitrators. JA Vol. I at 210-11.

In 1986, the State Bar co-sponsored the new Civil Discovery Act developed by the State Bar-Judicial Council Joint Commission. *Supporting Legal Services Delivery and Access*, Dec. 1986 California Lawyer 84; *see* Cal. Civ. Proc. Code § 2016 (West Supp. 1989). The Standing Committee on the Administration of Justice worked with State Assemblyman Elihu Harris on technical amendments necessary for the implementation of the Act. *Legal Services Delivery and Access*, Dec. 1987 California Lawyer 75.

In 1987, The State Bar began working with the Judicial Council and the Administrative Office of the Courts on issues relating to the implementation of the Trial Court Delay Reduction Act of 1986, which established delay reduction projects in the superior courts of nine California counties. *Id.*

These are but a few examples of the State Bar's efforts to fulfill its statutory mandate. However, the State Bar's actions are not limited to proposed legislation regarding technical or procedural areas of the law. The Bar works independently, as well as with the Legislature, to promote the interests of the public in obtaining quality legal representation and to insure the quality of the judicial system.

2. The State Bar Educates And Protects The Public Against The Unauthorized And Unethical Practice Of Law And Seeks To Insure Competent Representation Is Available To All.

The State Bar was established primarily in response to the perceived public dissatisfaction with the legal profession and the legal system as a whole. JA Vol. I at 202. Since its creation, the State Bar has consistently strived to enhance the public's confidence by systematically regulating the admission and discipline of attorneys. For example, within the first year of its existence, the State Bar promulgated: (a) Rules of Procedure for handling complaints against attorneys; (b) Rules of Professional Conduct establishing high standards for attorney behavior; and (c) Rules Regulating Admission To Practice Law. JA Vol. I at 202. Shortly thereafter, the State Bar Act was amended at the urging of the State Bar to proscribe ambulance chasing, running the capping, practices which seriously undermined the public's confidence in the legal community. Cal. Bus. & Prof. Code § 6152 (West Supp. 1989). JA Vol. I at 204.

In 1931, the State Bar established a public education program designed to educate attorneys regarding their obligation to the public and to educate the public regarding the functions of the profession and the legal system. JA Vol. I at 205.

In 1959, a study committee appointed by the Board of Governors of the State Bar recommended the establishment of a client security fund supported by membership dues. The Client Security Fund was eventually enacted by the Legislature in 1971. Cal. Bus. & Prof. Code § 6140.5 (West Supp. 1989). JA Vol. I at 209.

In 1972, in an effort to protect California residents against improper conduct committed by out-of-state attorneys in California, the California Supreme Court, upon recommendation of the State Bar, adopted a rule making out-of-state attorneys appearing as counsel pro hac vice subject to the jurisdiction of the California courts and the disciplinary jurisdiction of the State Bar. Cal. Rules of Court, rule 983 (West Supp. 1989). JA Vol. I at 212.

Today, the State Bar continues to enforce professional standards through disciplinary action, certification of Practical Training of Law Students, development and revision of the Rules of Professional Conduct, the issuance of ethics opinions and the maintenance of an ethics hotline, enforcement of statutes proscribing the unauthorized practice of law, administering the Client Security Fund, and the continuing education of lawyers. JA Vol. I at 200.

Another area of State Bar Concern is the availability of quality legal representation to all residents of California, in particular to those who are unable to afford such services. As early as 1928, the State Bar formed the Legal Aid Committee to foster the creation of local legal aid committees and panels of attorneys willing to donate their services to indigents and persons of moderate income. JA Vol. I at 203. Later, during the Second World War, the State Bar sponsored a program rendering free legal advice to military personnel and their dependents. JA Vol. I at 207.

During the 1950's, the State Bar commissioned a study to investigate means of delivering legal services to the middle class. The study later resulted in a program designed to encourage group legal service plans in California. JA Vol. I at 209. These programs continue today. JA Vol. I at 213.

Finally, the State Bar has played a prominent role in insuring the quality of the judiciary in California. In 1943, Governor Warren sought the assistance of the State Bar in evaluating the qualifications of proposed appointments to the courts of record. The Bar responded by establishing a Committee on Selection, Qualification, Tenure and Removal of Judges. JA Vol. I at 207. In the 1960's, the State Bar sponsored several plans for improving the judicial selection process, including a proposal for changing the composition of the Commission on Judicial Appointments, a state sponsored commission, to include non-lawyers as well as lawyers and judges. JA Vol. I at 211.

II.

IF PETITIONERS PREVAIL IN THIS ACTION, THE STATE BAR WILL BE UNABLE TO FULFILL ITS VITAL FUNCTIONS. NO OTHER ENTITY OR GROUP OF ENTITIES IS AVAILABLE TO FILL THE GAP.

Petitioners contend the State Bar has exceeded its legislative authority by engaging in "political and ideological activity" with which they disagree. OB at 26. What petitioners ignore, however, is that one of the very purposes which underlies the State Bar's existence – the advancement of the science of jurisprudence and the administration of justice – is inherently political. Although petitioners would have this court limit the State Bar's activities to areas of vital public concern, such line-drawing is impossible. In practice the activities objected to by petitioners could not be easily distinguished from those political activities which everyone, even petitioners, would agree legitimately further the efficient administration of justice.

Virtually any position the State Bar might take on any subject would doubtless be personally offensive to some members of the bar. How could a member of the State Bar's Board of Governors, for example, determine which items of proposed legislation affecting the court system or the legal profession are safe to comment on and which items involve "political" matters beyond the Bar's purview? Because it would be impossible to draw the line between permissible and impermissible activities, and because the individual members of the Board of Governors would face the specter of personal liability whenever they crossed that indefinable line, adoption of

petitioners' proposed rule would deter the State Bar from speaking out on all but the most innocuous subjects.

But if the State Bar is silenced, no other entity or group of entities is available to fill the gap. The voluntary bars, like this amicus, the Beverly Hills Bar Association, and the joining bar associations, are too numerous and diverse to offer coherent and timely responses to legislative or executive requests for assistance on pending legal matters or to protect the public from incompetent or unethical practitioners.[3] Indeed, the voluntary bars exist to serve an entirely different function than the State Bar. As voluntary organizations, they are comprised of individual attorneys who have joined together to advance a particular agenda (e.g., the interests of minority practitioners or those who practice in a particular geographic location or legal specialty). Although they also seek to improve the administration of justice, unlike the State Bar, they are free to promote the interests of their members without regard to the interests of the general public.

In sum, the activities of the State Bar cannot be meaningfully reproduced on the local level. Rather, an integrated State Bar is necessary to achieve the purposes for which it was established.

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[3] To date, there are over 200 voluntary bars in operation throughout California. San Francisco Banner Daily Journal, Sept. 19, 1989, at 1, col. 5.

III.

THE FIRST AMENDMENT WAS NEVER INTENDED TO BE USED AS A WEAPON TO CURTAIL FREE SPEECH.

A. The Objectives Of The State Bar Differ Significantly From Those Of A Labor Union. Accordingly, The State Bar Should Not Be Judged By The Same Constitutional Standards Which Apply To Labor Unions.

The primary objective of the State Bar is the protection of the public interest. Unlike a labor union, the Bar is a governmental agency. *See* Cal. Const. art. VI; Cal. Bus. & Prof. Code § 6001 (West Supp. 1989). Moreover, the public interests served by the Bar are much broader than those of a labor union. The Bar promotes quality legal services and advances the administration of justice. In contrast, the principal function of a labor union is to protect and advance the economic and social interests of its membership through the process of collective bargaining. *See Ellis*, 466 U.S. at 446 (noting the broad scope of union activities "aimed at benefiting union members"). While it is true the process of collective bargaining also benefits the public by promoting labor harmony, *Abood*, 431 U.S. at 219, the goal which fostered the union movement was primarily the improvement of wages and working conditions for a particular group of workers.

Given the legitimate, if not compelling public interests served by the Bar, and, as we demonstrate below, the minimal nature of the intrusion on petitioners' First Amendment rights, it is not unreasonable to require petitioners to tolerate some activities or speech which they find objectionable in order to further the public interests.

B. Petitioners' Claimed Impingements Of First Amendment Rights Are Either Nonexistent Or So Minimal That, When Weighed In The Balance, The Public Interest Favors Permitting The State Bar To Function Unhampered.

The State Bar functions described above are exactly those referred to by Justice Harlan as "among the most useful and significant branches of [the Bar's] authorized activities." *Lathrop*, 367 U.S. at 848 (Harlan, J., concurring). Petitioners nevertheless seek to curtail many of these activities on the theory that no governmental entity may compel an individual to pay money, a portion of which is ultimately used to support personally repugnant views, even if those views are embraced by a majority of a democratically elected body and the dissenting individual is entitled to separately voice his own opinion. Petitioners in effect seek to silence the State Bar in the name of the First Amendment. However, the First Amendment does not require unanimity of opinion before organized speech may be engaged in. Moreover, the claimed impingement of petitioners' First Amendment rights resulting from the Bar's activities is, at most, minimal.

Petitioners claim they are forced to pay membership dues to support positions with which they disagree. Contrary to their assertions, however, within the organizational framework of the State Bar,

> [t]he dissenter is not being made to contribute funds to the furtherance of views he opposes but is rather being made to contribute funds to a group expenditure *about which he will have something to say*. To the extent that his voice of dissent can convince his lawyer associates, it will

> later be heard by the State Legislature with a magnified voice.

Lathrop, 367 U.S. at 856 (Harlan, J., concurring, emphasis added). Furthermore, "it begs the question to approach the Constitutional issue with the assumption that the majority of the Bar has a permanently formulated position which the dissenting dues payor is being required to support . . . ." *Id.* (Harlan, J., concurring). To the contrary, the State Bar has no set agenda to which its members are required to contribute. Rather, the Bar's program evolves over the course of the year. Its authors include both the executive and legislative branches of state government, the Judicial Council, Section Committees, and the Conference of Delegates. JA Vol. I at 100. And, since the State Bar is organized much like Congress, with elected Board Members from each of nine geographic districts throughout the State, individual members may participate through their elected representatives.[4] *See* Cal. Bus. & Prof. Code § 6012 (West Supp. 1989).

In short, individual members are free to advocate their own positions, or to oppose those advocated by others. They may seek the election of board members sympathetic to their point of view. However, while the dissenter has a right to oppose the views of the majority, he has no "right not to have [his] opposition heard." *Lathrop*, 367 U.S. at 857 (Harlan, J., concurring). As Justice Harlan noted in *Lathrop*,

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[4] Unlike labor unions, the leadership of the State Bar is not entrenched. Five new members of the Board of Governors are elected each year. Cal. Bus. & Prof. Code § 6014 (West Supp. 1989).

> the argument under discussion is contradicted in the everyday operation of our society. Of course it is disagreeable to see a group, to which one has been required to contribute, decide to spend its money for purposes the contributor opposes. But the Constitution does not protect against the mere play of personal emotions. We recognized in Hanson that an employee can be required to contribute to the propagation of personally repugnant views on working conditions or retirement benefits that are expressed on union picket signs or in union handbills. A federal taxpayer obtains no refund if he is offended by what is put out by the United States Information Agency. Such examples could be multiplied.

Id. (Harlan, J., concurring).

Finally, the payment of mandatory dues which may be used to support legislation which the payor opposes does not amount to the kind of compelled affirmation of belief prohibited by the Constitution. The State Bar of California does not purport to speak on behalf of its individual members. *See Keller v. State Bar*, 47 Cal. 3d at 1158, 767 P.2d at 1023, 255 Cal. Rptr. at 545 (in the trial court, the State Bar submitted declarations stating that when acting in its administration of justice function, it speaks for itself). Nor does it require its members to adopt its views as their own. As set forth above, dissenting members are free to disagree with positions espoused by the Bar and to advocate publicly against them. There is an obvious

> difference in degree between, on the one hand, being compelled to raise one's hand and recite a belief as one's own, and, on the other, being compelled to contribute dues to a bar association fund which is to be used in part to promote

> the expression of views in the name of the organization (not in the name of the dues payor), which views when adopted may turn out to be contrary to the views of the dues payor.

Lathrop, 367 U.S. at 858 (Harlan, J., concurring). In the words of Justice Harlan, "the difference in degree is so great as to amount to a difference in substance." *Id.* (Harlan, J. concurring). The mere payment of dues, a portion of which is later used to promote proposed legislation, does not so associate the dues payor with that legislation as to amount to a compelled affirmation of belief in its content. *Compare West Virginia State Bd. Of Educ. v. Barnette*, 319 U.S. 624 (1942) (holding unconstitutional statute mandating compulsory pledge of allegiance). Any connection between the proposed legislation and a particular individual is tenuous at best. Moreover, "[t]he right of private judgment had never yet been so exalted above the powers and the compulsion of the agencies of government." *Hamilton v. Regents of The University of Cal.*, 293 U.S. 245, 268 (1934).

In sum, California's interest in promoting the efficient administration of justice is sufficiently compelling to justify the minimal intrusion on petitioners' First Amendment rights resulting from the use of compelled membership dues to support causes with which they disagree. Surely, the First Amendment does not stand for the proposition that a contribution, however small, entitles the contributor to silence an organization on any issue where the contributor opposes the views of the majority of the organization's members. Reducing petitioners' argument to its logical conclusion, the State Bar would be barred from taking a position on virtually *any*

matter substantially affecting the administration of justice without the unanimous approval of its membership. Moreover, it is inconceivable that the interests which this Court held sufficient to justify compelled membership in and contribution to a unified Bar are somehow insufficient to justify the use of compelled membership dues to further the interests for which the Bar was established in the first place. As Justice Harlan noted,

> A state legislature could certainly appoint a commission to make recommendations to it on the desirability of passing or modifying any of the countless uniform laws dealing with all kinds of legal subjects, running all the way from the Uniform Commercial Code to the Uniform Simultaneous Death Law. It seems no less clear to me that a reasonable license tax can be imposed on the profession of being a lawyer, doctor, dentist, etc. [Citation.] In these circumstances, wherein lies the unconstitutionality of what [California] has done? Does the Constitution forbid the payment of some part of the Constitutional license fee directly to the equally Constitutional state law revision commission? Or is it that such a commission cannot be chosen by a majority vote of all the members of the state bar? Or could it be that the Federal Constitution requires a separation of state powers according to which a state legislature can tax and set up commissions but a state judiciary cannot do these things?

Lathrop, 367 U.S. at 864-65 (Harlan, J., concurring).

Amicus curiae respectfully submits the State Bar's activities meet the requisite constitutional standards, and the California Supreme Court's decision upholding the validity of the Bar's statutory scheme should be affirmed.

CONCLUSION

California has an important, indeed a compelling interest in seeing that the State Bar fulfills is statutorily mandated functions. The claimed infringement on petitioners' First Amendment rights is nonexistent or, at most, trivial. Petitioners have full opportunity to advance their own positions and vote for governors of the State Bar sympathetic to their own point of view. They should not be allowed to silence that organization simply because it advances positions with which they disagree. Accordingly, the California Supreme Court's opinion should be affirmed.

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